

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

ELLIOT MCGUCKEN, an individual,

Plaintiff,

v.

NEWSWEEK, LLC, a New York Limited
Liability Company; and DOES 1-10, inclusive,

Defendant.

Case No: 1:19-cv-09617 (KPF)

DECLARATION OF NANCY E. WOLFF

NANCY E. WOLFF declares as follows:

1. I am admitted to the bar of this Court and am a partner at the law firm of Cowan, DeBaets, Abrahams & Sheppard LLP, attorneys for defendant Newsweek Digital LLC (“Newsweek”) in the above-captioned matter. I make this declaration in support of Newsweek’s Motion to Dismiss plaintiff Elliot McGucken’s (“Plaintiff”) First Amended Complaint dated January 24, 2020 (Dkt. No. 17).

2. Attached hereto as **Exhibit A** are true and complete screen captures of Plaintiff’s Instagram page (for the sake of brevity, only containing posts from the date the Amended Complaint was filed, January 24, 2020, to the date of this filing), accessed and prepared by my office on February 28, 2020. Plaintiff’s entire Instagram page, including, but not limited to, the posts contained in Exhibit A hereto, is publicly available at the URL <https://www.instagram.com/elliotmcgucken/?hl=en>.

3. Attached hereto as **Exhibit B** is a true and complete screen capture of the entire Instagram post uploaded to Instagram by Plaintiff on March 13, 2019 (the

“Instagram Post”), accessed and prepared by my office on February 28, 2020, which contains the photograph at issue in this litigation.

4. Attached hereto as **Exhibit C** is a true and complete screen capture of the entire original article posted by Newsweek on March 14, 2019, as referenced by Plaintiff in paragraph 12 of the Amended Complaint (the “Newsweek Article”). The Instagram Post has since been removed from the Newsweek Article.

5. Attached hereto as **Exhibit D** is a true and complete screen capture of Instagram’s “Sign Up” page, publicly available at <https://www.instagram.com/accounts/emailsignup/>, which was accessed and prepared by my office on February 28, 2020.

6. Attached hereto as **Exhibit E** is a true and complete printout of Instagram’s “Terms of Use,” publicly available at <https://help.instagram.com/478745558852511>, which was accessed and prepared by my office on February 28, 2020.

7. Attached hereto as **Exhibit F** is a true and complete printout of Instagram’s “Privacy Policy,” publicly available at <https://help.instagram.com/402411646841720>, which was accessed and prepared by my office on February 28, 2020.

8. Attached hereto as **Exhibit G** is a true and complete printout of Instagram’s “Platform Policy,” publicly available at <https://www.instagram.com/about/legal/terms/api/>, which was accessed and prepared by my office on February 28, 2020.

9. Attached hereto as **Exhibit H** is a true and complete copy of the Third Amended Complaint, including Exhibits A through K, in the matter captioned *Goldman v.*

Breitbart News Network, LLC, 17-cv-03144-AJN-SN (S.D.N.Y.) (Dkt. No. 38).

10. Attached hereto as **Exhibit I** is a true and complete printout of Instagram's "Embedding Policy," publicly available at <https://www.instagram.com/developer/embedding/>, which was accessed and prepared by my office on February 28, 2020.

11. Attached hereto as **Exhibit J** is a true and complete copy of the Complaint in the matter captioned *McGucken v. Chive Media Grp., LLC*, 18-cv-01612-RSWL-KS (C.D. Cal.) (Dkt. No. 1).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: New York, New York
February 28, 2020

A handwritten signature in cursive script that reads "Nancy E. Wolff".

NANCY E. WOLFF